



2008-090

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June 11, 2008

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Honorable John E. Hixon, Jr.
Executive Director
Alabama Peace Officers' Annuity
and Benefit Fund
Post Office Box 2186
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Peace Officers' Annuity and Benefit Fund
- Membership - Fees - Military Duty -
Service Credit

Members of the Alabama Peace Officers' Annuity & Benefit Fund ("Fund") who are also service members must pay their contributions to the Fund while they are on active duty, or at a minimum, pay the total amount that they would have paid monthly during their absence after they return within such time that is no less than three times the length of time they were away, not to exceed five years, to receive qualified service payment.

Dear Mr. Hixon:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Should members of the Alabama Peace Officers' Annuity & Benefit Fund, who are also service members in any branch of the armed forces, active or reserved components, be required to pay the monthly membership fees to the Fund to receive qualified service credit when they are ordered to duty?

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FACTS AND ANALYSIS

The Fund is a special fund established and placed under the management of Board of Commissioners of the Alabama Peace Officers' Annuity and Benefit Fund ("Board") for the purpose of providing retirement allowances and other benefits for members of the Fund. ALA. CODE § 36-21-66 (2001). To be a member of the Fund, one must be a peace officer. Section 36-21-60(11) defines "peace officer" as follows:

A person duly sworn as a peace officer of the State of Alabama possessing powers of arrest and employed by the state, any political subdivision thereof, or any municipal corporation therein who is required by the terms of employment, whether the employment exists by virtue of election or appointment, to give full time to the preservation of public order and the protection of life or property or the detection of crime in the state. The term shall include enforcement officers for conservation laws, full-time coroners, and any pardon, parole, or probation officer, but shall not include any district attorney, assistant district attorney, assistant attorney general, commissioner, deputy commissioner, or any municipal inspector, county inspector, or state inspector.

ALA. CODE § 36-21-60(11) (2001).

Peace officers who are called into active military duty continue to be peace officers while on military leave. Opinion to Honorable John E. Hixon, Jr., Executive Director, Alabama Peace Officers' Annuity Benefit Fund, dated June 13, 2002, A.G. No. 2002-256. Section 36-21-69 of the Code governs the types of service credit that a peace officer receives while on active military duty. This section states as follows:

Any peace officer who becomes a member of the fund and who left his work as a peace officer and entered directly into the armed forces of the United States and who returned to work as a peace officer within six months after he ceased to serve in the armed

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forces shall receive prior service credit for such service in the armed forces, not to exceed five years.

Any member who, in the determination of the board, is a member in good standing of the fund and who is drafted directly into any branch of the armed forces of the United States from his work as a peace officer and does not withdraw his fees shall not be required to pay any fees to the fund during his period of service in the armed forces and shall receive membership service credit for such service in the armed forces, not to exceed five years; provided, that he shall return to work as a peace officer within six months after he ceased to serve in the armed forces.

ALA. CODE § 36-21-69 (2001). The draft does not apply to any current service members. Therefore, peace officers that are active service members do not receive membership service credit.

“Membership service” is defined by section 36-21-60(8) of the Code as “[t]he period of employment of a member as a peace officer from the date he or she becomes a member.” ALA. CODE § 36-21-60(8) (2001). A “member” is any peace officer who is a member of the Fund and who is in good standing by virtue of having paid all sums required by this article to be paid by him. ALA. CODE § 36-21-60(7) (2001). Therefore, to maintain good standing, a service member who entered directly into the armed forces of the United States and who returned to work as a peace officer within six months after he or she ceased to serve in the armed forces must pay his or her dues to receive membership service credit. *See also*, opinion to Honorable John E. Hixon, Jr., Executive Director, Alabama Peace Officers’ Annuity and Benefit Fund, dated June 13, 2002, A.G. No. 2002-256 (“[t]he Board of Commissioners administering the Fund must accept the reservist’s/peace officer’s monthly contribution and continue his membership”).

“It is the public policy of the State of Alabama to promote service in the National Guard and in the reserves by public employees.” *See*, opinion to Honorable John E. Hixon, Jr., Executive Director, Alabama Peace Officers’ Annuity and Benefit Fund, dated June 13, 2002, A.G. No. 2002-256. The Fund may establish guidelines for peace officers to pay membership dues to the Fund

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to establish membership credit once they return from active duty. Although the Fund is not an employee benefit pension plan as defined by the Uniformed Services Employment Rights Act ("USERRA"), USERRA provides guidance to the application of similar benefits to servicemen. *See*, 38 U.S.C.A. § 4318(b)(2) (2006). USERRA gives servicemen the right to pay into an employee pension benefit plan the total amount that they would have paid during their absence after they return within such time that is no less than three times the length of time they were away, not to exceed five years, to receive qualified service payment. *Id.*

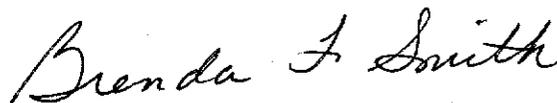
CONCLUSION

Members of the Fund who are also service members must pay their contributions to the Fund while they are on active duty, or at a minimum, pay the total amount that they would have paid monthly during their absence after they return within such time that is no less than three times the length of time they were away, not to exceed five years, to receive qualified service payment.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Matt Bledsoe of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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